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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,157	03/01/2004	Jacob Revivo	27770.036	3408
21907	7590	03/04/2005	EXAMINER	
ROZSA & CHEN 15910 VENTURA BOULEVARD SUITE 1601 ENCINO, CA 91436			MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,157

Applicant(s)

REVIVO, JACOB

Examiner

Susan B. McCormick-Ewoldt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>March 1, 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims Pending

Claims 1-12 will be examined on the merits.

Claim Objections

Claim 1 is objected to because of the following informalities: there should be a period at the end of the claim. Appropriate correction is required.

Claims 1 and 2 are objected to because of the following informalities: the word "dead" should be capitalized. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claims 9(b), 10(b), 11(b) and 12(b), the term "slowly" is vague as to the meaning. What speeds are encompassed by "slowly"? Clarification is needed.

In claims 9(d), 10(d), 11(d) and 12(d), the word "missing" is not clear in its meaning as to what it is meant. Clarification is needed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deckers *et al.* (US 2002/0037303 A1) in view of Stavroff *et al.* (US 5,866,145) and Schwartz (US 2002/0012697 A1).

A salt sorbet facial and body scrub comprising Dead Sea salt, Safflower seed oil, Dimethicone, Silica, fragrance, Avocado oil, Jojoba oil, Vitamin A, Vitamin B5, Vitamin C, Vitamin D3, Vitamin E and Vitamin K and a method of producing the scrub.

Deckers *et al.* (US 2002/0037303 A1) discloses a composition and a method of making comprising avocado oil, jojoba oil, safflower oil ([0078,] and [0079]) and vitamin A palmitate, vitamin B5, vitamin C, vitamin E acetate, vitamin D3 and vitamin K ([0159] and [0163]). In addition, dimethicone ([0134]) and fragrances ([0139] and [0142]) are used. Deckers *et al.* do not specifically teach using Dead Sea salt or silica in the composition.

Stavroff *et al.* (US 5,866,145) discloses using Dead Sea salt, dimethicone and fragrances in a body polisher that contains 50 to 80% Dead Sea salt and .1 to 2.0% fragrance (column 1, lines 32-37; column 2, lines 3-6, 13-17).

Schwartz (US 2002/0012697 A1) discloses the use of Dead Sea salt ([0011]), dimethicone ([0041] and [0042]), jojoba oil ([0045]), a fragrance ([0059]), safflower oil ([0065]) and silica ([0066]).

A person of ordinary skill in the art, one would be motivated to combine the references as taught by Deckers, Stavroff and Schwartz because the person of skill in the art would reasonably expect it to be used for an exfoliating scrub as shown by the references.

These references show that it was well known in the art at the time of the invention to use the claimed ingredients in compositions for benefiting the skin. It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Based on the disclosure by these references that these substances are used in compositions for benefiting the skin, an artisan of ordinary skill would have a reasonable

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expectation that a combination of the substances would also be useful in creating compositions for benefiting the skin, i.e. facial and body scrubs. Therefore, the artisan would have been motivated to combine the claimed ingredients into a single composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See *In re Sussman*, 1943 C.D. 518; *In re Huellmantel* 139 USPQ 496; *In re Crockett* 126 USPQ 186.

The references also do not specifically teach the ingredients in the amounts claimed by Applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of Applicant's invention.

The references also do not specifically teach the order of combining the ingredients claimed by Applicant. The order of combining ingredients in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the order of combining the ingredients to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of the order of combining the ingredients would have been obvious at the time of Applicant's invention.

From the teaching of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the cited reference, especially in the absence of evidence to the contrary.

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Summary

No claim is allowed.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

Susan D. Lee
3-1-05
SUSAN COE
PRIMARY EXAMINER